1980

Utah Public Employees Association; And, Larry Fields v. State of Utah; And, Scott M. Matheson, Governor, State of Utah : Reply Brief of Appellants

Utah Supreme Court

IN THE SUPREME COURT

OF THE

STATE OF UTAH

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UTAH PUBLIC EMPLOYEES' ASSOCIATION; and, LARRY FIELDS,	:	
Plaintiffs-Appellants,	:	Case No. 16616
vs.	:	
STATE OF UTAH; and, SCOTT M. MATHESON, Governor, State of Utah,	:	
Defendants-Respondent.	:	

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REPLY BRIEF OF APPELLANTS

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Appeal from a Summary Judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, Honorable Homer F. Wilkinson presiding.

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OTHER AUTHORITIES CITED

POINT I

USING THE "STRICT SCRUTINY" TEST, THE GOVERNOR'S POLICY DIRECTIVE VIOLATES THE CONSTITUTIONAL RIGHTS OF THE APPELLANTS.

The respondents argue in their brief that the "strict Scrutiny" test should not apply in this case because no fundamentally guaranteed rights or interests are at stake. Appellants disagree.

Appellants submit that the rights of the employees involved are fundamental rights. In attempting to define fundamental rights, the respondents have adopted a far too narrow definition.

In City of Carmel-By-The-Sea v. Young, 466 P.2d 225 (1970), the California Supreme Court held unconstitutional a statute requiring financial disclosure by public officials on the grounds that less burdensome alternatives existed to accomplish the purpose of the statute. In so holding, the court defined the concept of fundamental rights very broadly at page 230:

> "The concept of personal liberties and fundamental human rights entitled to protection against overbroad intrusion or regulation by government is not limited to those expressly mentioned in either the Bill of Rights or elsewhere in the Constitution, but instead extends to basic values "implicit in the concept of ordered liberty" (Palko v. State of Connecticut (1937) 302 U.S. 319, 325, 45 S.Ct. 149, 152 82 L.Ed. 288) and to "the basic civil rights

(Skinner v. State of Oklahoma (1942) 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655.) Among such basic liberties and rights not explicitly listed in the Constitution are the right "to marry, establish a home and bring up children" (Meyer v. Nebraska (1923) 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042); the right to educate one's children as one chooses (Pierce v. Society of Sisters (1925) 268 U.S. 510, 534-535, 45 S.Ct. 571, 573, 69 L.Ed. 1070); the right to marry the person of one's choice (Perez v. Sharp (1948) 32 Cal.2d 711, 714, 198 P.2d 17); the "right to travel" (Aptheker v. Secretary of State (1964) 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed. 2d 992; Kent v. Dulles (1958) 357 U.S. 116, 78 S.Ct. 1113, 2 L.Ed.2d 1204; Shapiro v. Thompson (1969) 394 U.S. 618, 689 S.Ct. 1322, 1329, 394 U.S. 618); freedom to associate and privacy in one's associations" including privacy of the membership lists of a constitutionally valid organization (NAACP v. Alabama (1958) 357 U.S. 449, 462, 78 S.Ct. 1163, 1172, 2 L.Ed.2d 1488; see also Bates v. City of Little Rock (1960) 361 U.S. 516, 523-527, 80 S.Ct. 412, 4 L.Ed. 2d 480; Gibson v. Florida Legislative Comm. (1963) 372 U.S. 539, 557-558, 83 S.Ct. 889, 9 L.Ed. 2d 929; Huntley v. Public Util. Com. (1968) 69 Cal.2d 67, 72-74, 69 Cal. Rptr. 605, 442 P.2d 685); and the right to privacy and to be let alone by the government in "the private realm of family life." (Prince v. Com. of Masschusetts (1944) 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645; Griswold v. State of Connecticut, supra, 381 U.S. 479, concuring opinions at 495, 502, 85 S.Ct. 1678 14 L.Ed.2d 510) Forms of "association" have been protected that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members. (Griswold, supra, at p. 483 of 381 U.S., at p. 1681 of 85 S.Ct.) (emphasis added)

Appellants submit that their freedom to associate with fellow members of the hunting fraternity in Utah has been violated by the governor's policy directive. In view of the fact that the freedom to associate is a fundamental right, the policy directive fails because there are at least three less burdensome approaches available to accomplish the same purpose which the governor is attempting to accomplish by the policy directive.

To further demonstrate that the "strict scrutiny" test applies in this case, appellants draw the courts attention to paragraphs three and four of the lower courts memorandum decision:

> "However, the court wishes to note that the Plaintiff has alleged that the Governor's policy is too stringent and that the same thing can be accomplished in a "less burdensome and restrictive" way, and this may be so. Affadavits are provided that assert alternative methods of solving this problem but in the court's opinion they raise questions of fact which the court cannot consider on a motion for summary judgment.
>
> The Court feels that the only way to resolve the question on whether there is a less burdensome and restrictive way is at an evidentiary hearing."

It is clear from the above cited portion of the lower courts decision, that the court found the "strict scrutiny" test to be the appropriate test to apply in this case. If this were not so, the lower court would not have made

reference to the need for an evidentiary hearing in order to determine if there were less restrictive alternatives available.

POINT II

USING THE "RATIONAL BASIS" TEST, THE GOVERNOR'S POLICY DIRECTIVE VIOLATES THE CONSTITUTIONAL RIGHTS OF THE APPELLANTS.

If the court were to hold that the rights involved in this case are not fundamental rights and therefore, the "strict scrutiny" test does not apply, appellants submit that the governor's policy directive also fails the "rational basis" test.

Part of the "rational basis" test requires that the classification be reasonable - i.e., the persons singled out must be appropriate. In Kenny v. Byrne, 365 A.2d 211, 144 N.J. Super. 243 (1976), the court said the following at page 219 with reference to the appropriateness of the class:

> "A perusal of the class of employees encompassed by the order reflects a sound and reasonable basis for the selection made by the Governor. The affected employees are upper-level officials who bear the major responsibility for carrying out the functions of State Government. They personally participate in the decision-making process and are therefore most likely to become involved in conflicts of interest of other improper activities." (emphasis added)

In the instant case, the class is not appropriate. As pointed out in Affidavit No. 4 on file herein, only six of the 350 employees in the Division of Wildlife Resources are involved in the drawing. When the drawing is conducted by six employees at Division of Wildlife Resources headquarters in Salt Lake City, it is unreasonable to extend the prohibition to hundreds of other employees who have absolutely nothing to do with the drawing and who reside many miles away in St. George and Logan. As the court stated in Kenny, supra, the class was found to be reasonable because the persons effected by the governor's order personally participated in the activities which the order was attempting to reach. In this case, we have no such personal involvement by 344 or the 350 employees in the class.

The respondent may argue that even though only six of the 350 employees are personally involved in conducting the drawing, all 350 employees, because of their employment in the DWR have access to special radio-sensing devices and "inside information" regarding the habits and movements of the animals, all of which gives them an unfair advantage over members of the general public. The facts do not support that argument. On the contrary, the facts show that the hunting success of the DWR employees is far less than the success of members of the general public. (see affidavit No. 5). In short, the argument raised by the respondents regarding "special radio-sensing devices" and "inside information" is empty rhetoric.

POINT III

THE POLICY DIRECTIVE ISSUED BY THE GOVERNOR IS ILLEGAL IN THAT IT CONFLICTS WITH THE STATUTORY AUTHORITY GRANTED TO THE BOARD OF BIG GAME CONTROL IN SECTION 23-14-6, UTAH CODE ANNOTATED, 1953.

The law is clear that the governor of a state has only such powers as are vested in him by the constitution and the statutes enacted pursuant thereto. Martin v. Chandler, 318 S.W.2d 40; Royster v. Brock, 258 Ky. 146, 79 S.W.2d 707.

The limitations upon the authority of a governor to act were spelled out in Ellingham v. Dye, 178 Ind 336, 99 NE 1, error dismd 231 US 250, 58 L ed 206, 34 S ct 92, where the court said:

> "The governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred. His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the constitution and laws have placed the particular matter under his control. But every officer under constitutional government must act according to law and subject to its restrictions, and every departure therefrom or disregard thereof must subject him to the restraining and controlling power of the people, acting through the agency of the judiciary; for it must be remembered that the people act through the courts, as well as through the executive or the legislature. One department is just as representative as the other, and the judiciary is the department that is charged with the special duty of determining the limitations that the law places upon all official action."

Another statement concerning the limitation upon a governor's authority to act is found in 38 Am Jur 2d, Governor, Section 4 which reads as follows:

> "A constitutional grant of the supreme executive power to a governor implies such power as will secure an efficient execution of the laws, which is the peculiar province of that department, to be accomplished, however, in the manner, by the methods, and within the limitations prescribed by the constitution and statutes of the state." (emphasis added)

Clearly, the governor cannot act in contravention of state statute. In the case of State ex rel. Murane v. Jack. 52 Wyo. 173, 70 P.2d 888, 71 P.2d 917, 112 ALR 161, the court declared illegal an attempt by the governor to fix mileage rates for state employees who used their own automobiles in the transaction of state business where a state statute specifically set a different mileage rate. In so holding the court stated:

> "Once it is conceded or determined that chapter 66, supra, enacts that plaintiff shall receive his actual expense, not to exceed 8 cents, incurred in the use of his own automobile no authority, except the Legislature itself, may change that statutory mandate thus declared. We find no existing law where the Legislature has made any such change."

The case before this court is one in which the governor has acted in direct conflict with a state statute. The pertinent part of Section 23-14-6, Utah Code Annotated, 1953, reads as follows:

> "Big game hunting season established by board of big game control - Procedure. The division of wildlife resources is empowered to investigate and determine the facts relative to the big game resources of this state. Upon a determination of these facts, the board of big game control shall have full authority to establish hunting seasons for big game animals throughout the state and shall establish the policy of the division in all matters relating to the harvest of big game animals." (emphasis added)

Clearly, the above mentioned statute delegates to the Board of Big Game Control (hereinafter "Board"), the exclusive authority to establish the policy of the division in all matters relating to the harvest of big game animals. Appellants submit that this includes a determination of who can and cannot participate in the drawing relative to the harvest of the big game animals.

Because the statute clearly delegates the authority to the Board, the governor's actions would be illegal even if the Board silently acquiesced in his policy directive. However, the Board did not merely acquiesce silently in the governor's policy directive. On the contrary, the Board formally objected to it. Indeed, the official minutes from meetings of the Board held on December 18, 1978 and April 3, 1979 clearly indicate the Board's disagreement with the governor's policy directive. Copies of these minutes are attached hereto as Appendix A. The pertinent portion of the

minutes of the meeting held on December 18, 1978 reads as follows:

"Doug Day noted that the Governor, by decree, has indicated that the Division of Wildlife Resources employees are not eligible for once-in-a lifetime permits to hunt buffalo, moose, and desert bighorn sheep. It was something that came as a surprise to the Division and personnel were very pleased that Don Smith had relaxed the restriction. Some employees made applications for these permits and a few drew out. One of the employees has filed a grievance relative to the Governor's action.

John Mumma said he would propose that the Board take a position asking the Governor to relax this; point out the drawing is open for scrutiny and is noncontrollable by Division employees as it is a computerized drawing. He said he was concerned that privileges are being taken away from Division employees. Doug Day said he recommended to the Governor that, if there were any kind of restriction, it should be that applicants should put in for only one species a year--that would preclude anyone drawing out more than one. Further, he said that the Wildlife Federation has taken a stand indicating to the Governor their support of Division employees being able to apply for these hunts.

The following motion was made by Mr. Mumma, seconded by Mr. Johnson. Messrs. Johnson and Mumma voted YES; Mr. Leigh voted NO. Doug Day voted YES. Motion passed.

I move the Board of Big Game Control go on record that it believes the Governor acted rather hastily in announcing that Division of Wildlife Resources employees are not eligible to draw for once-in-a-lifetime permits for buffalo, moose and desert bighorn sheep.

Mr. Mumma volunteered to contact Hal Hintze and write up an appeal to the Governor on behalf of the Board.

Doug Day noted there is good public input into the drawings for these permits; they are witnessed by the public. He further noted that he had worked in personnel for years and felt strongly that the Division didn't need employees with anti-hunting philosophies. If indeed employees are prohibited from hunting there is a possibility the Division of Wildlife Resources could be staffed by personnel with anti-hunting sentiments (the Division has received letters saying employees should not be allowed to hunt at all).

The pertinent portion of the minutes of the meeting held on April 3, 1979 reads as follows:

"John Mumma indicated he was very disappointed that Harold Hintze was not present, both from the standpoint of the discussion on the Ute Indian Compact and the involvement of the Board in the issue of the once-in-a-lifetime permits. He said he had talked to Hal and asked him to get together with Norm and write up something asking for consideration and he agreed to do that.

Doug Day said the grievance was at the hearing level. He was unable to anticipate whether the Governor would change his mind. Doug said he was pretty sure if it is denied it would go to court. He noted that the employee's grievance mentioned both the Wildlife Board and Board of Big Game Control as being excluded from applying for permits. He asked if the Board members had any input. John Mumma said the only thing he knew of was the news release and he knew of nothing that would prevent board members from applying. He further reiterated that he was concerned that Division employees are not being treated as citizens and he didn't think they should give up all their rights. John Mumma volunteered to follow through with Harold Hintze on this issue.

In short, it is clear that the governor overstepped his authority and infringed upon the right, authority, jurisdiction and prerogative of the Board in prohibiting employees in the

Division of Wildlife Resources from participating in the annual drawing for once-in-a-lifetime hunting permits.

Members of the hunting fraternity are familiar with the Board and with its powers to establish policy relative to the harvest of big game animals in the State of Utah. If the public were indeed upset with the fact that division employees could participate in the annual drawing, the Board rather than the governor, would have received those complaints and would have been in a position to address the issue. The fact is, as clearly set forth in the above mentioned minutes of Board meetings, the Board did address the issue, and based upon its assessment of the matter not only refused to agree with the governor's policy directive, but indeed rejected it on a three to one vote.

An article which addresses the dangers associated with the unlimited power of a governor to issue executive orders, (and appellants submit that the power to issue policy directives is not unlike the power to issue executive orders), is found in Connecticut Bar Journal, Vol. 51, No. 4, December 1977, entitled "Executive Orders: Discretion vs. Accountability." The article concludes with the following statement at page 393:

> "Executive orders, because they enjoy the full force and effect of law and are frequently promulgated without notice, hearing or record, represent a potential vehicle for the abuse of the authority we grant to the executive branch of our government."

The appellants respectfully submit that the subject policy directive issued by the governor does represent such an abuse of authority and a violation of the rights of the Board of Big Game Control as well as the rights of the employees of the Division of Wildlife Resources.

CONCLUSION

The policy directive issued by the governor violates the constitutional rights of the appellants and Section 23-14-6, Utah Code Annotated, 1953, and therefore should be struck down by this court.

DATED this _____ day of _____, 1980.

Respectfully submitted,

_____

J. FRANCIS VALERGA
438 South Sixth East
Salt Lake City, UT 84102

Attorney for Plaintiffs - Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served two (2) copies of the foregoing Reply Brief of Appellant upon Michael L. Deamer, Chief Deputy Attorney General, attorney for defendants - respondents, 236 State Capitol Building, Salt Lake City, Utah, by hand delivering the same to his office this _____ day of _____, 1980.

_____

J. FRANCIS VALERGA

APPENDIX A

BOARD OF BIG GAME CONTROL
SPECIAL SESSION
April 3, 1979
Salt Lake City, Utah

Present:

Board Members

Douglas F. Day, Chairman
Division of Wildlife Resources
Newell Johnson, Utah Woolgrowers Association
John Mumma, U.S. Forest Service
(Harold Hintze, Utah Wildlife and Outdoor Recreation Federation, was absent)
(Richard Leigh, Utah Cattlemen's Association, was absent)

Wildlife Resources Personnel

Norm Hancock, Chief, Game Management
Homer Stapley, Field Programs Director
Clair Huff, Operations Director
Kendall Nelson, Assistant Chief, Game Mgmt.
Jim Burruss, Game Management
Janet Christensen, Secretary

Interagency Committee

Norm Hancock, Division of Wildlife Resources
William B. McMahan, Bureau of Land Management

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Chairman Day called the meeting to order at 2:00 p.m. He said that a formal agenda had not been prepared but inasmuch as the Board of Big Game Control has jurisdiction over the big game of Utah, he felt they should be consulted as the Indian issue was becoming rather critical. Certain rights and issues are being negotiated on lands outside of the Trust Lands of the Ute Indians which are causing the Division considerable concern. Other items to discuss include the once-in-a-lifetime permits discussed at the meeting of the Board on December 18, 1978.

UTE INDIAN COMPACT

Mr. Day noted that the state has been negotiating for about two years with the Ute Indians relative to water on the CUP project. The only involvement the Division had was with the Task Force appointed by the Governor. Don Smith was chairman (Ute Indian Claims/Wildlife Resources Task Force; members were as

aboriginal Americans; it is possible that Indians all over the United States and Canada are going to be holding subsistence rights above sports hunting; they maintain they take precedence.

Doug Day asked if the members present would want to take a vote on the subject. There was question as to whether the chairman and two board members made a quorum. Doug remarked that he was pretty sure the Division would not go much further than the counterproposal in negotiating. He said he would feel better if Messrs. Mumma and Johnson would say that the Division was on the right track and to hang in there. He said that the Wildlife Board would be involved with the fishing rights; the chairman of that board said to treat the Indians like everyone else off the Trust Lands. Norm Hancock noted that was Dick Leigh's remark also. John Mumma said that he thought the Division was on the right track with negotiations--professional management and free permits--but he thought it went beyond money and the Indians would want more. Newell Johnson said he felt this had been gone through pretty carefully by the Division; he thought the offer could be made and although he had a few objections relative to extended boundaries, we had to start somewhere.

John Mumma said he was surprised the Division hasn't had more kickback. Doug Day indicated the Wildlife Federation was thinking of suing him for offering anything to the Indians. Norm Hancock indicated that in these kind of things the public looks to the Division to represent them and balance things out. They have confidence we will do all right; they are not really aware of the problems. Doug Day said the Federation is aware and are very concerned that the Indians don't get any special privileges off the Trust Lands. Homer Stapley said that while the issue was before the Legislature numerous phone calls were received; the Legislature is aware of how the public feels. Doug Day said he felt there was a good chance a special session of the Legislature would be held in June to confirm appointments. The Governor wants the compact to be ready for the Legislature to debate at that time.

ONCE-IN-A-LIFETIME PERMITS

John Mumma indicated he was very disappointed that Harold Hintze was not present, both from the standpoint of the discussion on the Ute Indian Compact and the involvement of the Board in the issue of the once-in-a-lifetime permits. He said he had talked to Hal and asked him to get together with Norm and write up something asking for consideration and he agreed to do that.

Doug Day said the grievance was at the hearing level. He was unable to anticipate whether the Governor would change his mind. Doug said he was pretty sure if it is denied it would go to court. He noted that the employee's grievance mentioned both the Wildlife Board and Board of Big Game Control as being excluded from applying for permits. He asked if the Board members had any input. John Mumma said the only thing he knew of was the news release and he knew of nothing that would prevent board members from applying. He further reiterated that he was concerned that Division employees are not being treated as citizens and he didn't think they should give up all their rights. John Mumma volunteered to follow through with Harold Hintze or this issue.

APPENDIX A

BOARD OF BIG GAME CONTROL
SPECIAL SESSION
December 18, 1978
Salt Lake City, Utah

Present:

Board Members
Douglas F. Day, Chairman
Division of Wildlife Resources
Richard Leigh, Utah Cattlemen's Association
Newell Johnson, Utah Woolgrowers Associatic
John Mumma, U. S. Forest Service
(Harold Hintze, Utah Wildlife and Outdoor Recreation Federation, was absent)

Wildlife Resources Personnel
Norm Hancock, Chief, Game Management
Homer Stapley, Field Programs Director
LaVar Ware, Chief, Communications
Clair Huff, Operations Director
Kendall Nelson, Assistant Chief, Game Mgmt.
Grant Jense, Game Management
Ed Rawley, Wildlife Resources Planner
Janet Christensen, Secretary

Interagency Committee
Norm Hancock, Division of Wildlife Resources
Paul Shields, U. S. Forest Service
William B. McMahan, Bureau of Land Manager

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The meeting was called to order at 1:30 p.m. by Douglas F. Day, Chairman.

SCHEDULE FOR BIG GAME MATTERS

Doug Day noted there had been a real problem this year in getting permits out to the public in time for the hunts. Division personnel discussed the problem and determined that the Division can meet deadlines for publishing proclamations, holding drawings, and processing and mailing permits if everything runs perfectly; but it does not always do this, and the Division always seems to be in a bind. A proposed schedule was developed by the Division which would give some leeway for contingencies (copy attached). He felt the public image of the Division and the Board would be improved if the schedule were adopted.

The schedule would be as follows: Interagency Committee meetings, week of May 7; public meetings, June 1 through 8; executive session, June 9;

1978 BIG GAME HARVEST STATUS REPORT

Mr. Hancock indicated the return on the elk harvest was not complete. However, there were about 300 more open bull hunters in 1978 than in 1977. There were 3,072 elk harvested in 1978. At this point, he said he estimated a harvest of about 3,500 in 1978. A post-season hunt on the Cache started last Saturday and will be going through December 24.

There were 66 moose permits on Bear River-Hole-in-the-Rock; out of 55 returns 50 moose were harvested in that unit. Ogden River had 6 permits; 5 returns were received indicating 5 were harvested. Daggett County had 6 permits; 5 returns were received indicating 5 were harvested. The hunt on Bear River-Hole-in-the-Rock (November 4 - December 3) allowed 22 cow permits; 6 have been reported harvested so far.

There were 23 permits issued on desert bighorn sheep; 21 returns have been received indicating 6 harvested, but regional personnel figured there were 7 or 8 harvested.

There were 353 antelope permits; returns have been received on 282, indicating 244 harvested. There were 22 buffalo permits; 21 were harvested--9 cows, a male calf and 11 bulls. All were tested for brucelosis; tests were negative.

Mr. Mumma expressed a curiosity about proportion of out-of-state hunters who applied to the ones that drew out on once-in-a-lifetime hunts.

ONCE-IN-A-LIFETIME PERMITS

Doug Day noted that the Governor, by decree, has indicated that the Division of Wildlife Resources employees are not eligible for once-in-a-lifetime permits to hunt buffalo, moose and desert bighorn sheep. It was something that came as a surprise to the Division as personnel were very pleased that Don Smith had relaxed the restriction. Some employees made applications for these permits and a few drew out. One of the employees has filed a grievance relative to the Governor's action.

John Mumma said he would propose that the Board take a position asking the Governor to relax this; point out the drawing is open for scrutiny and is non-controllable by Division employees as it is a computerized drawing. He said he was concerned that privileges are being taken away from Division employees. Doug Day said he recommended to the Governor that, if there were any kind of restriction, it should be that applicants should put in for only one species a year--that would preclude anyone drawing out more than one. Further, he said that the Wildlife Federation has taken a stand indicating to the Governor their support of Division employees being able to apply for these hunts.

The following motion was made by Mr. Mumma, seconded by Mr. Johnson. Messrs. Johnson and Mumma voted YES; Mr. Leigh voted NO. Doug Day voted YES. Motion passed.

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Mr. Mumma volunteered to contact Hal Hintze and write up an appeal to the Governor on behalf of the Board.

Doug Day noted there is good public input into the drawings for these permits; they are witnessed by the public. He further noted that he had worked in personnel for years and felt strongly that the Division didn't need employees with anti-hunting philosophies. If indeed employees are prohibited from hunting there is a possibility the Division of Wildlife Resources could be staffed by personnel with anti-hunting sentiments (the Division has received letters saying employees should not be allowed to hunt at all).

OTHER BUSINESS

In answer to a query, Norm Hancock indicated that the Interagency Committee was formed as a result of an agreement in 1944 between the U. S. Forest Service, Bureau of Land Management and Division of Wildlife Resources to establish a procedure for obtaining pre-season harvest data. Formal action was then taken by the Board of Big Game Control charging the Interagency with the responsibility of being a fact-finding committee for the Board. The Interagency Committee didn't function until 1946. They are charged with responsibility to collect data and coordinate on a statewide basis. John Mumma indicated that this was all good information and cautioned that recommendations from the Interagency Committee should be based on biological information. Mr. Johnson noted he felt the private landowners had no input. Norm Hancock noted that the Interagency Committee gathers data on all land, whether private or otherwise. Mr. Johnson said he was alluding to recommendations on either-sex elk permits more than anything else.

Doug Day asked if it was the intent to have the antelope hunt begin on September 15. Norm Hancock indicated they would try to work toward a later date such as this to accommodate getting the permits out before the hunts started. John Mumma indicated he felt there was no problem as long as there were public hearings set up and the public had input.

Mr. Johnson indicated he felt it would be well if the Board of Big Game Control could discuss some of these recommendations with the Interagency Committee before the recommendations come out; he mentioned problems relative to the archery season. Asked when meeting dates of the cattlemen and woolgrowers would be held, Newell Johnson indicated the sheepmen would have their annual meeting about January 4-5. Mr. Leigh indicated the cattlemen didn't have any recommedations. Mr. Johnson said he didn't think the sheepmen and cattlemen should lock themselves into a pattern we can't deviate from.

Opening dates of archery season on deer and elk season were discussed, and Norm Hancock reviewed the history of committees set up to make recommendations to the Board inasmuch as these two issues had taken up a considerable amount of time in executive sessions. Mr. Johnson indicated it seemed to be